

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

On June 22, 2005, Petitioner Abraham Flores timely filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

Petitioner pleaded guilty pursuant to a written Plea Agreement to use of a communication facility in connection with a drug offense in violation of 21 U.S.C. § 843(b). Petitioner was sentenced on June 25, 2004 to 48 months incarceration.

Petitioner's Section 2255 motion asserts that his sentence is unconstitutional based on *United States v. Booker*, 543 U.S.

1 220 (2005).

2 Petitioner's motion is DENIED. *Booker* is not retroactive to
3 cases on collateral review. *United States v. Cruz*, 423 F.3d 1119
4 (9th Cir.2005), cert. denied, 546 U.S. 1155 (2006).

5 For the reasons stated:

6 1. Petitioner Abraham Flores' motion to vacate, set aside
7 or correct sentence pursuant to 28 U.S.C. § 2255 is DENIED.

8 2. The Clerk of the Court is directed to enter JUDGMENT FOR
9 RESPONDENT.

10 IT IS SO ORDERED.

11 Dated: August 1, 2008

12 /s/ Oliver W. Wanger
13 UNITED STATES DISTRICT JUDGE

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